

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

**JENNIFER GREGORY,  
Plaintiff**

**v.**

**METROPOLITAN LIFE INSURANCE  
COMPANY and AMERICAN  
AIRLINES, INC., c/o American Eagle  
Inc. and Executive Airlines,  
Defendants**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**File No. 1:08-CV-150**

**ORDER**

The Magistrate Judge's Report and Recommendation was filed June 3, 2009. (Doc. 90.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Plaintiff's motion for summary judgment to the extent she seeks an order directly awarding her benefits (Doc. 45) is DENIED. Plaintiff's motion for summary judgment on the issue of plan participation (Doc. 66) is DENIED. American Airlines, Inc. ("American") and Metropolitan Life Insurance Company's ("MetLife") cross-motion for summary judgment (Doc. 49) is DENIED and the matter is REMANDED to the plan administrator for a second-level appeal before the Pension Benefits Administration Committee to determine Plaintiff's eligibility for long-term disability benefits, including whether or not she was a plan participant at the onset of her disability.

In addition, MetLife's motion to dismiss (a) any claim made by Plaintiff against MetLife under ERISA § 502(c)(1)(B) for MetLife's alleged violation of 29 C.F.R. § 2560.503-1(h)(2)(iii), and (b) any state law "insurance bad faith" claim against MetLife (Doc. 57) is GRANTED. Plaintiff's objection to American's submission of evidence outside the administrative record (Doc. 60) is SUSTAINED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 14<sup>th</sup> day of August, 2009.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
Senior United States District Judge